



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CR. CASE NO. 70 OF 2009

REPUBLIC PROSECUTOR

VERSUS

PETER M. NKARONI 1ST ACCUSED
AYUB M. MARANGU 2ND ACCUSED

RULING

Both accused have been charged for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are as follows:-

“On 26th July 2009, at Nkando Village, Uruku sub-location, Uruku Location within South Imenti District of Eastern Province jointly with others murdered Jashon M. Mungania.”

From the records, it is apparent that the accused were first arraigned before this court on 7th August 2009. That means the accused have now been in remand for a period of more than 3 years. On 26th November 2010, Hon. Justice Lady Lesiit declined to admit both accused to bail since both of them were found to be confused by the probation officer. Since that decision by the learned Judge, it is now almost one year. On 11th October 2011, the accused persons renewed their bail application through Mr. Mwirigi. In response to the application, the learned State Counsel Mr. Motende stated that the accused persons are likely to interfere with the witnesses. Secondly, the learned State Counsel acknowledged the fact that the Constitution provides that the accused may be released on bail. However, he stated that those powers are not absolute and that the court has the discretion to exercise its powers after considering the circumstances surrounding the case and whether those circumstances can lead to compelling reasons for the court to determine whether they are justified to release the accused on bail. In this particular case, he stated that interfering with witnesses is the compelling reason.

This court has carefully considered the submissions made by the learned counsels. Though the court appreciates the vital point that has been raised by the State Counsel, it is unfortunate that the investigating officer in this case has not filed any affidavit to depone that there is a likelihood of the accused persons interfering with the witnesses. Filing of an affidavit under these circumstances is very crucial when there is a danger and likelihood that the witnesses may be interfered with by any party who is connected to this suit. In the absence of an affidavit, it is rather difficult for this court to evaluate whether the allegations which have been made have any basis at all. As has been stated clearly, the Constitution has now been amended to give the court the discretion to admit an accused person to bond or bail in murder cases. However, that discretion must be exercised judiciously. In this particular case, the probation officer has filed two reports relating to the accused persons. Both reports recommend the release of the accused

on bond. Besides the above, the report has gone into details to consider the background of the accused, the suspect's character and the community sentiments towards the release on bail and more importantly, the victim's family attitude towards the release. Given the above circumstances, I hereby grant each accused bond of Kshs. 500,000/= with two sureties for a similar amount. Alternatively each accused may be released on a cash bail of Kshs. 100,000/=.

Those are the orders of this court.

MUGA APONDI
JUDGE

Ruling read, signed and delivered in open court in the presence of:-

Present - Accused persons

Mr. Motende - State Counsel

Mr. Mwirigi - Defence Counsel

MUGA APONDI
JUDGE

10TH NOVEMBER 2011.